

VENDING ORDINANCES SUMMARY AND COMPILATION

**Below is a summary and compilation of the ordinances relative to vending
in the City of Portsmouth.**

**Chapter 3, Article IV, is the City's Noise Ordinance. The Noise ordinance is
at times applicable to activities relative to vending.**

ARTICLE IV: NOISE CONTROL

Section 3.401:

It is found and declared that:

- A. The making and creation of excessive, unnecessary loud noises within the limits of the City of Portsmouth is a condition which has existed for some time and the extent and volume of such noises is increasing;
- B. The making, creation or maintenance of such excessive unnecessary, unnatural or unusually loud noises which are prolonged, unusual and unnatural in their time, place and use, affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the City of Portsmouth and;
- C. The necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted, is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of Portsmouth and its inhabitants.

Section 3.402:

It shall be unlawful for any person to make, continue or cause to be made or continued any excessive, unnecessary or unusually loud noise or any noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace or safety of others, within the limits of the City.

Section 3.403: NOISES PROHIBITED - UNNECESSARY NOISE STANDARD

The following acts, among others, are declared to be loud disturbing and unnecessary noises in violation of this Ordinance, but said enumeration shall not be deemed to be exclusive, namely:

- A. Horns, Signaling Devices, Etc.: The sounding of any horn or signaling device on any automobile, motorcycle, street car or other vehicle on any street or public place of the City, except as a danger warning; the creation by means of any such signaling device of any unreasonable loud or harsh sound; and the sounding of any device for an unnecessary and unreasonable period of time. The use of any signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any such signaling device when traffic is for any reason being held up.

- B. Radios, Phonographs, Etc.: The using, operating, or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machines or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.
- C. Loud Speakers, Amplifiers for Advertising: The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, phonograph, loud speaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is case upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.
- D. Yelling, Shouting, Etc.: Yelling, shouting, hooting, whistling, or singing on the public street, particularly between the hours of 11:00 p.m. and 7:00 a.m., or at any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in any office, or in any dwelling, hotel, or other type of residence, or of any persons in the vicinity.
- E. Animals, Birds, Etc.: The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort or repose of any persons in the vicinity.
- F. Steam Whistles: The blowing of any locomotive steam whistle or steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon request of proper City authorities.
- G. Exhausts: The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor boats, or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- H. Defect in Vehicle or Load: The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such a manner as to create loud and unnecessary grating, grinding, rattling or other noise.
- I. Loading, Unloading, Opening Boxes: The creation of a loud and excessive noise in connection with loading or unloading any vehicle or ship or the opening and destruction of bales, boxes, crates and containers. The loading or unloading of any sanitation vehicles in any district between the hours of midnight and 7:00 a.m. in such a manner as to be plainly audible in a residential district at a distance of 50 feet from such loading or unloading shall be prima facie evidence of a violation of this Section.
- J. Construction or Repairing of Buildings: The erection (including excavation), demolition, alteration or repair of any building other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the Building Inspector, which permit may be granted for a period not to exceed three days or less while the emergency continues and which permit may be renewed for periods of three days or less while the emergency continues. If the Building

- Inspector should determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets and highways within the hours of 6:00 p.m. and 7:00 a.m., and if he shall further determine that loss or inconvenience would result to any party in interest, he may grant permission for such work to be done within the hours of 6:00 p.m. and 7:00 a.m. upon application being made at the time the permit for the work is awarded or during the progress of the work.
- K. Schools, Courts, Churches, Hospitals: The creation of any excessive noise on streets adjacent to any school, institution of learning, church or court while the same are in use, or adjacent to any hospital which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in such streets indicating that the same is a school, hospital or court street.
 - L. Hawkers and Peddlers: The shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood.
 - M. Drums: The use of any drum or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale.
 - N. Metal Rails, Pillars and Columns, Transportation Thereof: The transportation of rails, pillars, columns of iron, steel or other material over and along streets and other public places upon cars, trays, cars, trucks or in any other manner to loaded as to cause loud noises or as to disturb the peace and quiet of such streets or other public places.
 - O. Street Railway Cars, Operation Thereof: The causing, permitting or continuing any excessive, unnecessary and avoidable noise in the operation of a street railway car.
 - P. Pile Drivers, Hammers, Etc.: The operation between the hours of 10:00 p.m. and 7:00 a.m. of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other appliance, the use of which is attended by loud or unusual noise.
 - Q. Blowers: The operation of any noise creating blower or power fan or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noise.
 - R. Engine Compression Brakes: It shall be unlawful for the driver of any vehicle other than police or fire emergency vehicles to use, operate or cause to be used or operated, within the City of Portsmouth, any mechanical exhaust device designed to aid in the stopping or braking of said vehicle, in a manner so as to create excessive, loud, unusual or explosive noise from the vehicle. (Adopted 5/15/2006).

Chapter 4, Article V, regulates “victuallers”, namely those selling food items. Food vendors from mobile cars would fall under any applicable sections.

ARTICLE V: COMMON VICTUALLERS

Section 4.501 LICENSE

No person or persons shall carry on and operate a restaurant or public eating house within the City of Portsmouth without first having obtained a common victualler's license from the Department of Health of said City.

Section 4.502: APPLICATION

The application shall state the name of the applicant, the place where his business is to be carried on. Upon filing of such application, the Sanitary Inspector shall at once examine the applicant's premises to see if they are in a clean and sanitary condition and well-lighted; and if his findings be favorable, the Department shall grant the license subject to the provisions of the laws of the State, the regulations of the State Board of Health, and the Ordinances of the City pertaining hereto.

Section 4.503: TERM OF LICENSE

Such license shall be granted for one year from the first day of July next preceding the date of application; and may be renewed from time to time by said Department. No person shall be refused a common victualler's license except upon an unfavorable report by the Sanitary Inspector as to the sanitary condition of his premises, unless otherwise herein provided.

Section 4.504: SANITARY REQUIREMENTS

Every holder of a common victualler's license shall keep his premises clean and well lighted, shall see to it that all refrigerators or other receptacles for food are kept clean, that the room where foods are prepared and cooked shall be kept clean and sanitary to the satisfaction of the Sanitary Inspector; and that no meats, vegetables, or other food shall be prepared or served therein except such as are clean and sanitary for human consumption. No person who has active syphilis or gonorrhoea shall be employed by any holder of a common victualler's license in the preparation or cooking of food.

Section 4.505: PERSONNEL

All personnel of restaurants, grill rooms, soda fountains, hotel dining rooms, and other public dining places shall file a health certificate with the Department of Health once every year.

Section 4.506: INSPECTION - SUSPENSION AND REVOCATION OF LICENSES

The Sanitary Inspector shall inspect the premises of all common victualler's weekly, and shall report any violations of the condition of the license to the Department of Health, and said Department shall thereupon suspend said license for a period not exceeding one week, and thereafter if a second violation shall be made by any licensee during the term of his license, he shall be ineligible to receive a common victualler's license for a period of three years.

Section 4.507: PENALTY - FAILURE TO LICENSE

No person or persons who shall carry on or operate a restaurant or public eating place with the City of Portsmouth without being licensed to do so as herein before provided, shall be fined not exceeding one hundred (\$100) dollars for each day such violation continues.

Chapter 6, Article XIII, contains the bulk of the regulations governing peddlers and vendors. A peddler includes any person who travels from place to place vending food or non-food items. A vendor is a peddler who on public property, sells food or merchandise from a stand or motor vehicle or his person. Pursuant to the ordinance, peddlers and vendors are required to obtain a license from the City Clerk's Office. This Article prohibits certain conduct of vendors and limits vending locations. The penalty for violation of the ordinance is a fine of up to \$500.00

ARTICLE XIII: HAWKERS AND PEDDLERS

Section 6.1301: LICENSE REQUIRED

A person shall not engage in the business of peddler, as defined in RSA 320:1, within the corporate limits of the City of Portsmouth without first obtaining a license therefore as provided herein.

Section 6.1302: DEFINITIONS

For purposes of this Ordinance, the following definitions shall apply:

Motor Vehicle: Any vehicle used for the displaying, storing, or transporting of articles offered for sale by a vendor which is required to be licensed and registered by the Department of Motor Vehicles.

Peddler: As used herein shall be as defined in RSA 320:1 and shall include any person, whether a resident of the City of Portsmouth or not, traveling by foot, wagon, automotive vehicle, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying, or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, stand, automotive vehicle, railroad car, or other vehicle or conveyance and includes one who solicits orders and as a separate transaction makes deliveries to purchasers. The word "peddler" shall include "hawker", "vendor" and "huckster". The definition of the term, "peddler" shall include each horse drawn carriage for hire which operates within the City limits. (Amended 9/18/95)

Public Assembly Buildings: As used herein shall be as defined in the BOCA Basic/National Building Code/1984, Article III, Sections 302.1 - 302.6.

Public Property: Any city owned or controlled property including but not limited to streets and sidewalks.

Sell: Shall include any offer to sell or attempt to sell.

Stand: Any push-cart, wagon, or any other wheeled vehicle or device which may be moved without the assistance of a motor and which is not required to be licensed and registered by the Department of Motor Vehicles, used for the displaying, storing or transporting of articles offered for sale by a vendor. (Amended 6/21/99).

Vendor: A peddler who on public property sells food, beverages or merchandise from a stand, motor vehicle or his person.

Section 6.1303: APPLICATION

The license required by this Article shall be issued in accordance with the General Licensing Ordinance, Article 6.107.

The application for a peddler's license shall include, in addition to the information required by the General Licensing Ordinance:

- A. The name, home and business address of the applicant, and the name and address of the owner, if other than the applicant, of the business and of any stand or motor vehicle to be used in the operation of the business.
- B. A description of the type of food, beverage or merchandise to be sold, and in the case of products of farm or orchard, whether produced or grown by the applicant.
- C. A description and photograph of any stand or motor vehicle to be used in the operation of the business, including the license and registration number of any motor vehicle used in the operation of the business.
- D. A certificate of insurance or other proof acceptable to the Licensing Officer that the applicant has been issued an insurance policy by an insurance company licensed to do business in the State of New Hampshire, protecting the licensee and the City from all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with the license. The insurance policy shall provide that the policy shall not be terminated or cancelled prior to the expiration date except with thirty (30) days advance written notice to the City. The policy shall provide combined single limit coverage in the amount of \$1,000,000 for personal injury and property damage. The City of Portsmouth shall be named as additional insured thereunder. (Amended 6/21/99)

Section 6.1304: ISSUANCE

Not later than thirty (30) days after the filing of a completed application for a vendor's license, the applicant shall be notified by the Licensing Officer of the decision on the issuance or denial of the license. The Licensing Officer shall consider the standards set forth in this Article and the Ordinances of the City of Portsmouth in determining whether to grant a license.

If the issuance of the license is approved, the Licensing Officer shall issue the license. If the license is denied, the applicant shall be provided with a statement of the reasons for the denial. The reasons shall be entered in writing on the application. The applicant shall be entitled to a hearing pursuant to Section 6.1316. All licenses issued under the provisions of this chapter shall expire on June 30 annually.

All licenses issued hereunder shall be displayed by the vendor on the vending cart in a place visible to the public.

Section 6.1305: PROHIBITED CONDUCT - VENDOR

A vendor shall not:

- A. Vend within one thousand (1,000) feet of the grounds of any elementary or secondary school between one hour prior to the start of the school day and one hour after dismissal at the end of the school day;
- B. Vend within one thousand (1,000) feet of any hospital;
- C. Vend within fifty (50) feet on the same street of any public assembly building while such building is in use;
- D. Vend on any street or sidewalk where vending is otherwise prohibited;
- E. Leave any stand or motor vehicle unattended;
- F. Store, park, or leave any stand overnight on any street or sidewalk, park any motor vehicle other than in a lawful parking place, in conformance with City and state parking regulations;
- G. Sell food or beverages for immediate consumption unless he has available for public use his own litter receptacle which is available for his patrons' use;
- H. Leave any location without first picking up, removing and disposing all trash or refuse remaining from sales made by him;
- I. Allow any items relating to the operation of the vending business to be placed anywhere other than in, on or under the stand or motor vehicle, except as expressly indicated in the application for a license;
- J. Set up, maintain or permit the use of any table, crate, carton, rack, sign, or any other device to increase the selling or display capacity of his stand or motor vehicle, where such items have not been described in his application;
- K. Solicit or conduct business with persons in motor vehicles;
- L. Sell anything other than that which he is licensed to vend;
- M. Sound or permit the sounding of any device which produces a loud and raucous noise, or use or operate any loud speaker, public address system, radio sound amplifier or similar device to attract the attention of the public;
- N. Vend without the insurance coverage specified in Section 6.1303(d);
- O. Vend without a fire extinguisher of a type approved by the Fire Chief or his designee if the vendor utilizes heat generation equipment.

Section 6.1306: PROHIBITED CONDUCT - SIDEWALK VENDORS

In addition to the conduct prohibited by Section 6.1305, a vendor selling from a stand on the sidewalk shall not:

- A. Vend at any location where the unobstructed sidewalk area after deducting the area occupied by the stand is less than three (3) feet in width;
- B. Vend within thirty (30) feet of any driveway entrance to a police or fire station, or within ten (10) feet of any other driveway;
- C. Allow the stand or any other item relating to the operation of the vending business to lean against or hang from any building or other structure lawfully placed on public property, without the owner's written permission.

Section 6.1307: PROHIBITED CONDUCT - VENDOR FROM MOTOR VEHICLE

In addition to the conduct prohibited by Section 6.1305 a vendor selling from a motor vehicle shall not:

- A. Conduct his motorized business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, or create or become a public nuisance, increase traffic congestion or delay, or constitute a hazard to traffic, life or property, or an obstruction to adequate access to fire, police, or sanitation vehicles;
- B. Stop, stand, or park his vehicle upon any street, or permit it to remain there except on the roadway at the curb for the purpose of vending therefrom;
- C. Stop, stand, or park his vehicle upon any street for the purpose of selling or sell on any street under any circumstances during the hours when parking, or stopping or standing has been prohibited or is prohibited by statute by signs or curb markings or Ordinance;
- D. Remain in any one location for longer than is authorized by the parking ordinances of the City unless specifically authorized to do so. In areas not covered by the parking ordinances, parking shall be limited to thirty (30) minutes.

Section 6.1308: PROHIBITED LOCATIONS

Vending or Peddling is specifically prohibited at the following locations:

- A. On the sidewalk area in front of the North Church bounded by Pleasant Street, Church Street, Congress Street and the front façade of the Church. (Adopted 12/02/02)

Section 6.1309: HEALTH AND SANITATION REQUIREMENTS FOR FOOD AND BEVERAGE VENDING

A vendor of food and beverages shall comply with the inspection provisions and standards for restaurants contained in the Ordinances of the City of Portsmouth.

- A. The equipment used in vending food and beverages shall not be used until the vendor receives a certificate of inspection indicating compliance with this section.
- B. Each food and beverage vending business shall be inspected at least quarterly by the Health Officer.

Section 6.1310: ADVERTISING

A peddler shall not permit advertising on any stand or motor vehicle, except to identify the name of the product or the name of the vendor and the posting of prices.

Section 6.1311: MOTORIZED FOOD VENDORS IDENTIFICATION

All motorized food vendors operating in the City of Portsmouth are required to have lettering on both sides and rear of their vehicle(s), identifying the name of the business. The letters shall be at least four inches (4") in height and of such color and design as to be clearly visible at a distance of at least fifty (50) feet. The letters shall be of a material and affixed in a manner approved by the Licensing Officer.

Section 6.1312: RENEWAL

An application to renew a license shall be made not later than thirty (30) days before the expiration of the current license in accordance with Section 6.1304.

Section 6.1313: TEMPORARY SUSPENSION FOR STREET CLOSINGS

An official temporary encumbrance or closure of a street or sidewalk by the City for purposes of maintenance or reconstruction shall cause the suspension of all licenses to operate thereon.

Section 6.1314: STREET FAIRS

Any person or persons wishing to use or occupy a portion of any street or sidewalk for the purposes of conducting thereon street fairs or other community events, including but not limited to the sale of merchandise by commercial retailers, or by community associations conducting street fairs or other promotions must, pursuant to the provisions of RSA 31:100, obtain a license from City Council.

Section 6.1315: PUBLIC CELEBRATIONS

The Licensing Officer may, under conditions deemed appropriate by him, grant a temporary vendor's license to operate during public celebrations.

Section 6:1316: LICENSE FEES

The license required by this Article shall be issued upon approval by the Licensing Officer. Fee to be determined in accordance Chapter 1, Article XVI or similar wording. The fee is for one (1) year or any part thereof. (Amended 6/21/99) (Amended 3/18/2002).

Section 6:1317: LICENSE SUSPENSION OR REVOCATION AND HEARING

Upon written notice to the licensee, the license issued hereunder may be suspended for the remainder of its term, or any portion thereof, by the City Manager upon a finding that any of the terms and conditions of this Article have been knowingly violated by the licensee.

At the request of any licensee receiving notice of suspension or revocation pursuant to this section, the Chairperson of the Vendor's Committee shall arrange a hearing of the Vendor's Committee. Such hearing shall be scheduled during normal business hours of City Hall within seven (7) calendar days of the receipt by the Chairperson of the request for such hearing, Saturdays, Sundays and holidays excluded. The Chairperson of the Vendor's Committee shall conduct and preside over all hearings scheduled under this section. The hearings shall be informal and the rules of evidence shall not apply. At such hearings the licensee may present any defense of law or fact which is relevant to the issue of whether or not the license should be suspended or revoked. The decision of the Vendor's Committee shall be final, subject only to judicial review. No licensee whose license has been suspended or revoked shall be granted another license during the period of suspension or revocation. (Amended 12/02/02)

Section 6.1318: PENALTIES

Any person, firm, or corporation who violates any provision of this Article shall be subject upon conviction of a fine of up to Five Hundred (\$500.00) Dollars per violation.

Chapter 8, Article I, Section 8.120 regulates merchandise placed for sale on the public sidewalk. Chapter 8, Article II, Section 8.207 prohibits vending in the municipal parks subject to certain exceptions. In addition, the location of sidewalk vendors around Prescott Park is regulated in this section.

Section 8.120: DISPLAYING MERCHANDISE ON SIDEWALK

No person shall sell, or expose for sale or place or cause to be placed in or over a space exceeding 24" (twenty-four inches) nearest the premises occupied by such person, on any sidewalk of any street, lane, or public place in this City, any article of any kind.

Section 8.207: MERCHANDISING, ADVERTISING AND SIGNS

A. Vending and Peddling

No person in a park shall expose or offer for sale any article or thing, nor shall he station or place any stand, cart or vehicle for transportation, sale or display of any such article or thing. Exception is here made as to any regularly licensed concessionaire acting by and under the authority and regulation of the Director.

Exception is also made for the concession stand at Prescott Park, the operation of which must be authorized through the City Council. (Adopted 3/20/89)

B. Advertising

No person in a park shall announce, advertise or call the public attention in any way to any article or service for sale or hire.

C. Signs

No person in a park shall paste, glue, tack or otherwise post any sign, placard, advertisement or inscription whatever nor shall any person erect or cause to be erected any sign whatever on any public lands or highways or roads adjacent to a park.

D. Location of Sidewalk Vendors, Peddlers

No vendor or peddler shall station or place one's person, stand, cart or vehicle for transportation, sale or display of any article or thing in the following locations:

1. A point measured at 124 feet from the corner of State Street and Marcy Street extending 60 feet in an easterly direction along the northerly sidewalk of Marcy Street; (Adopted 6/20/88)
2. A point measured at 334 feet from the corner of State Street and Marcy Street extending 155 feet in an easterly direction along the northerly sidewalk of Marcy Street. (Adopted 6/20/88)